

# COUNTY OF YORK

## MEMORANDUM

**DATE:** April 1, 2005 (BOS Mtg. 4/19/05)

**TO:** York County Board of Supervisors

**FROM:** James O. McReynolds, County Administrator

**SUBJECT:** Application No. UP-662-05, James D. and Mia M. Cunningham

### **ISSUE**

This application seeks a Special Use Permit, pursuant to Section 24.1-407(b) of the York County Zoning Ordinance, to authorize an accessory apartment of approximately 515 square feet on the second story of a detached garage to be built in conjunction with an existing single-family detached home on a 0.81-acre parcel of land located at 104 North Will Scarlet Lane (Route 1311) in the Queens Lake subdivision.

### **DESCRIPTION**

- Property Owner: James D. and Mia M. Cunningham
- Location: 104 N Will Scarlet Lane (Route 1311)
- Area: Approximately 0.81 acre
- Frontage: Approximately 60 feet on N Will Scarlet Lane
- Utilities: The property is served by a private water system and a septic system
- Topography: Steep and moderate slopes are present on most of the property.
- 2015 Land Use Map Designation: Low Density Residential
- Zoning Classification: RR – Rural Residential
- Existing Development: Single-family detached home
- Surrounding Development:
  - North: Single-family detached home
  - East: Single-family detached home
  - South: Single-family detached home
  - West: Queens Lake
- Proposed Development: Accessory apartment on the second story of a proposed detached garage

## **CONSIDERATIONS/CONCLUSIONS**

1. The subject property is located in the Queens Lake subdivision, which is zoned RR (Rural Residential) and designated for Low Density Residential development in the *Comprehensive Plan*. The property owners wish to construct a detached garage, which is permitted as a matter of right as an accessory structure to a single-family detached home. There are no immediate plans to construct an accessory apartment, but the homeowners wish to install plumbing with the intention ultimately of creating a habitable area, including a bathroom, above the garage and are eager to proceed with construction, so they are requesting a use permit. This is why the floor plans submitted by the applicants depict the second story of the garage simply as storage rather than showing the living area and bathroom that they ultimately plan to construct and which would constitute an accessory apartment. Approval of this use permit in advance would allow them to establish the apartment at a latter date. Any detached accessory apartment, regardless of its size, can only be permitted upon the approval of a Special Use Permit.
2. Since accessory structures such as detached garages are, by definition of the Zoning Ordinance, “incidental and subordinate” to the principal use of the property on which they are located, they generally cannot be located closer to the front lot line than the principal building, nor can they be taller than the principal building. As shown on the sketch plan submitted by the applicant, the garage would be located in front of the existing home; however, because the principal building setback exceeds fifty feet (50’) in this case, the detached garage will be subject only to a fifty-foot (50’) minimum building setback requirement. The proposed garage location as depicted on the sketch plan meets this requirement. In addition, accessory buildings are not permitted to be taller than the buildings to which they are accessory, except that pursuant to Section 24.1-231(a)(3) of the Zoning Ordinance, buildings that are accessory to single-story buildings can be constructed to a maximum height not exceeding 1.25 times the height of the principal building. Regardless of the actual building height, the garage/apartment may *appear* taller than the house as viewed from the street because of its location and the topography of the lot, which slopes steeply to the rear. Conditions of approval have been included in the proposed resolution to address both the building setback and height limitations.
3. Set forth in Section 24.1-407 of the Zoning Ordinance are performance standards for accessory apartments that limit the number of accessory apartments to one per single-family detached dwelling, require adequate provisions for off-street parking, require occupancy only by family members or guests of the occupant of the principal dwelling, and prohibit the apartment from being rented separate from the principal dwelling. These standards have been included as conditions in the approving resolution.
4. The property is not served by sanitary sewer. The County plans to extend public sewer to the Queens Lake subdivision, but completion of this project is not expected before the 2006-2009 time frame. Section 24.1-497(h) of the Zoning Ordinance states that for any property where public sewer is not available, approval of an accessory

apartment shall be contingent on certification by the Virginia Department of Health that the on-site septic system is adequate to serve the total number of bedrooms proposed on the property. The Health Department has reviewed this application and has indicated that the addition of a bedroom will require either that the septic system be expanded (which may be impractical or infeasible because of the severe topography) or that occupancy be limited through the issuance of a conditional permit restricting the combined occupancy of the home and the accessory to no more than six (6) individuals. The conditional permit would have to be recorded as a deed restriction on the property and as such would be binding on any future purchaser of the property, at least until sanitary sewer becomes available. A proposed condition of approval addresses this requirement.

5. Property within the subdivision is not subject to homeowners' covenants nor does it fall under the jurisdiction of an established homeowners' association. Queens Lake has an association that is responsible for common areas and facilities such as the lake, pool, and clubhouse, but it has no architectural review authority and membership is voluntary. Regardless of any covenants that may be deeded, the County must evaluate the accessory apartment use within the context of the Zoning Ordinance and its standards. The County cannot be a party to the enforcement of private covenants, and approval of a Special Use Permit will not relieve the applicant of any responsibilities for compliance with any such covenants.

#### **PLANNING COMMISSION RECOMMENDATION**

The Planning Commission considered this application at its March 9 meeting and, subsequent to conducting a public hearing at which only the applicant's agent spoke, voted 7:0 to recommend approval.

#### **COUNTY ADMINISTRATOR RECOMMENDATION**

At 515 square feet, the proposed accessory apartment would be smaller than almost all that have been approved in recent years and would in fact be permitted as a matter of right if attached to the principal dwelling. Similarly, the detached garage also would be permitted by right if it were not to include a bathroom. I believe the subject property can accommodate the proposed accessory apartment with no adverse impacts on surrounding properties and in compliance with all applicable zoning regulations. Therefore, based on the considerations and conclusions as noted, I recommend that the Board approve this application subject to the conditions contained in proposed Resolution No. R05-59. Because the applicant does not have immediate plans to construct the accessory apartment, Condition No. 9 in the proposed Resolution extends the deadline for establishing the use from two years to three years, as provided for by Section 24.1-115(c)(1).

Carter/3337:TCC

Attachments

- Excerpts of Planning Commission Minutes, March 9, 2005
- Zoning Map

York County Board of Supervisors

April 1, 2005

Page 4

- Plot plan
- Floor plan
- Building elevations
- Proposed Resolution No. R05-59